

APPEAL NO. 022681
FILED DECEMBER 2, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 26, 2002. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury on _____, and that because the claimant had not sustained a compensable injury, he did not have disability.

The claimant appeals, contending that the hearing officer's determinations are not supported by sufficient evidence. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The claimant testified that he sustained a low back injury on _____, lifting a one-gallon can of paint. The claimant continued working through the rest of the week (three days) and reported his injury to the employer on October 8, 2001. The circumstances of what he reported are in dispute. The claimant saw a doctor on October 10, 2001, and was released to return to work without restrictions on October 16, 2001. The record of these visits does not indicate a work-related injury. When the claimant attempted to return to work, he was told his position had been filled. The claimant changed doctors and was subsequently taken off work.

The hearing officer commented that "credibility played a major role in sorting the facts of this case" and concluded that the claimant had not met his burden of proof. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust and we do not find it to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **NORTH AMERICAN SPECIALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Veronica Lopez
Appeals Judge